IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

MFA.No. 188 of 2003(D)

OP(MV).498/1999 of M.A.C.T.,ERNAKULAM
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APPELLANT: PETITIONER

K.AJITH KUMAR, AGED 30 YEARS,
SON OF K.V.ANANDAN, ANIL BHAVAN, MEMANA ROAD,
THEKKUMBHAGAM, TRIPUNITHURA.

BY ADV. SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.
SMT.NITHYA.K.

RESPONDENTS: RESPONDENTS
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1. K.A.ANIL KUMAR, S/O. ANNDAN,
ANIL BHAVAN, MEMANA ROAD, THEKKUMBHAGAM,
TRIPUNITHURA.

2. KERALA STATE INSURANCE DEPARTMENT,
DISTRICT INSURANCE OFFICE, ERNAKULAM, GANDHI NAGAR
COCHIN-20

BY GOVERNMENT PLEADER SRI.SANDESH RAJA FOR R2

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 2/03/2007, THE COURT ON 20/03/2007 DELIVERED THE FOLLOWING:

P.R. Raman & Antony Dominic, JJ.
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M.F.A.No.188 of 2003
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Dated this the 20th day of March, 2007.

JUDGMENT

Antony Dominic,J.

Claimant before the Motor Accidents Claims Tribunal, Ernakulam in O.P.(M.V.)No.498 of 1999 is the appellant. The case of the claimant was that while he was working as a Peon in Choice School, Tripunithura, earning a monthly income of Rs.2,700/-, he met with an accident on 16.1.1999. According to him, he was travelling as a pillion rider on a motor cycle having registration No.KL-7/S-7256, driven by the first respondent in a rash and negligent manner. The motor cycle hit against a hump and overturned and as a result of the accident, the appellant sustained injuries. He was hospitalised and as per Ext.A5, accident-cum-wound certificate issued by R.C.M. Hospital, Tripunithura, the injuries sustained by the appellant were recorded as tenderness, swelling, comminuted fracture (Lt.) clavicle, fracture (Lt.) scapula. The Tribunal, taking note of the evidence that was available, awarded Rs.18,500/- with 9% interest from 5.3.1999, the date of

petition till the date of payment, although the total claim was for Rs.1,20,000/-. It is claiming enhancement of compensation and also in so far as the award fastens liability on the first respondent, that this appeal is filed.

2. On going through the award, we note that the accident occurred when the injured was travelling as a Pillion rider in a motor cycle driven by the first respondent, who was none other than the brother of the appellant. The allegation is that the first respondent was rash and negligent in driving the motor cycle which resulted in the accident. Although he had claimed a total amount of Rs.1,20,000/-, taking into account the evidence, the injuries sustained, the period of hospitalisation and the medicines purchased, etc., the Tribunal has granted a reasonable total compensation of Rs.18,500/-. Although the appellant had prayed for compensation towards permanent disability, loss of earning power and loss of expectation of life, in the absence of any convincing evidence in support of the above claims the Tribunal had negatived the claims. We do not find any error in the approach made by the Tribunal and we are of the view that there is no scope for enhancing the amount of compensation awarded. In our view, the Tribunal has taken a reasonable approach in awarding the compensation.

3. As far as the complaint of the appellant that the Tribunal ought to have fastened the liability on the second respondent – insurer, we note from the award that Ext.A10 is the copy of the policy produced by the claimant. It was only a photocopy and the name and address of the insured was typed and the period of the policy was seen hand written. The policy did not contain registration number of the vehicle. Although the first respondent, who was riding the motor cycle, was none other than the brother of the claimant, for reasons best known to the first respondent, the second respondent remains ex parte and both the first respondent and the claimant failed to produce the original insurance policy and the registration certificate of the vehicle. It was in these circumstances that the Tribunal held that the photocopy of the certificate produced was unreliable. We do not find any error in the approach of the Tribunal and see no reason why this finding of the Tribunal should be set aside in this appeal. We also note that being a pillion rider on a motor cycle except in the case of extended policy with additional premium paid, the claimant cannot get coverage of the insurance and this position is settled by the judgment reported in **United India insurance Co. Ltd.** v. **Tilak Singh** - 2006 (2) K.L.T. 884. The claimant does not have a case that the policy

satisfied these requirements. This is an added reason why the award of the Tribunal should be upheld.

In the result, we find no merit in this appeal and the appeal will stand dismissed.

P.R.Raman,
Judge.

Antony Dominic,
Judge.

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